



DEPARTMENT OF ENERGY

Notice of Intent to Prepare a Supplemental Environmental Impact Statement for the Long-Term Management and Storage of Elemental Mercury

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of intent.

SUMMARY: As required by the *Mercury Export Ban Act of 2008*, as amended (MEBA), the U.S. Department of Energy (DOE) must identify a facility or facilities for the long-term management and storage of elemental mercury generated within the United States. To this end, DOE intends to prepare a supplemental environmental impact statement (DOE/EIS-0423-S2; SEIS-II) to supplement both the January 2011 *Environmental Impact Statement for the Long-Term Management and Storage of Elemental Mercury* (DOE/EIS-0423; 2011 Mercury Storage EIS) and the September 2013 *Supplemental Environmental Impact Statement for the Long-Term Management and Storage of Elemental Mercury* (DOE/EIS-0423-S1; 2013 Mercury Storage SEIS) by updating these previous analyses of potential environmental impacts and analyzing additional alternatives, in accordance with the *National Environmental Policy Act* (NEPA).

ADDRESSES: Questions concerning the SEIS-II development or requests to be placed on the SEIS-II distribution list can be sent to: Mrs. Julia Donkin, NEPA Document Manager, Office of Environmental Management, U.S. Department of Energy, EM-4.22, 1000 Independence Avenue SW, Washington, DC 20585, elementalmercury_nepa@em.doe.gov or (202)586-5000.

Questions related to DOE's elemental mercury program should be directed to Mr. David Haught, Mercury Program Manager, Office of Environmental Management, U.S. Department of Energy, EM-4.22, 1000 Independence Avenue SW, Washington, DC 20585, David.Haught@hq.doe.gov or (202)586-5000.

FOR FURTHER INFORMATION CONTACT: Additional information regarding the SEIS-II, the 2011 Mercury Storage EIS, 2013 Mercury Storage SEIS, other related documents, and the scope of DOE's elemental mercury program is available online at

<https://www.energy.gov/nepa/doeeis-0423-long-term-management-and-storage-elemental-mercury>. For general information concerning DOE's Office of Environmental Management NEPA process, please contact Mr. William Ostrum, Office of Environmental Management NEPA Compliance Officer, U.S. Department of Energy, EM-4.31, 1000 Independence Avenue SW, Washington, DC 20585, William.Ostrum@hq.doe.gov or (202) 586-2513.

SUPPLEMENTARY INFORMATION:

Background

The *Mercury Export Ban Act of 2008* (Pub. L. 110-414), as amended by the *Frank R. Lautenberg Chemical Safety for the 21st Century Act* (Pub. L. 114-182) (MEBA), amends the *Toxic Substances Control Act* (TSCA; 15 U.S.C. 2601–2629) to prohibit the sale, distribution, or transfer by Federal agencies to any other Federal agency, any state or local government agency, or any private individual or entity, of any elemental mercury under the control or jurisdiction of a Federal agency (with certain limited exceptions). MEBA also amends TSCA to prohibit the export of elemental mercury from the United States (with certain limited exceptions). Section 5 of MEBA, “Long-Term Storage” (42 U.S.C. 6939f), is codified with the *Resource Conservation and Recovery Act* (RCRA; 42 U.S.C. 6901 et seq.) and directs DOE to designate a facility or facilities for the long-term management and storage of elemental mercury generated within the United States. MEBA also requires DOE to assess a fee based upon the pro rata costs of long-term management and storage of elemental mercury delivered to the facility or facilities.

The primary sources of elemental mercury in the United States include elemental mercury generated as a byproduct of the gold mining process and mercury reclaimed from recycling and waste recovery activities. In addition, DOE's National Nuclear Security

Administration (NNSA) stores approximately 1,200 metric tons of elemental mercury at the Oak Ridge Reservation in Tennessee, which was generated in support of NNSA's mission.

The 2011 Mercury Storage EIS evaluated seven candidate locations for the elemental mercury storage facility, as well as a No Action Alternative. The locations included new facility construction, use of existing facilities, or both. The candidate locations were: DOE Grand Junction Disposal site near Grand Junction, Colorado (new construction); DOE Hanford Site near Richland, Washington (new construction); Hawthorne Army Depot near Hawthorne, Nevada (existing facility); DOE Idaho National Laboratory near Idaho Falls, Idaho (new construction and existing facility); Bannister Federal Complex in Kansas City, Missouri (existing facility); DOE Savannah River Site near Aiken, South Carolina (new construction); and the Waste Control Specialists LLC (WCS) site near Andrews, Texas (new construction and existing facility).

The 2013 Mercury Storage SEIS evaluated three additional alternative locations, at and in the vicinity of the Waste Isolation Pilot Plant near Carlsbad, New Mexico (all new construction). The 2013 Mercury Storage SEIS also updated the analysis of the alternatives presented in the 2011 Mercury Storage EIS.

For the 2011 Mercury Storage EIS and the 2013 Mercury Storage SEIS, DOE estimated that up to approximately 10,000 metric tons of elemental mercury would need to be managed and stored at the DOE facility during the 40-year period of analysis.

On December 6, 2019, DOE issued a Record of Decision (ROD) to document its designation of the WCS site near Andrews, Texas, for the management and storage of up to 6,800 metric tons of elemental mercury in leased portions of existing buildings, the Container Storage Building and Bin Storage Unit 1, at the WCS site (84 FR 66890). The ROD was supported by DOE's *Supplement Analysis of the Final Long-Term Management and Storage of Elemental Mercury Environmental Impact Statement* (DOE/EIS-0423-SA-1), which determined

that the long-term management and storage of up to 6,800 metric tons of elemental mercury in existing buildings at the WCS facility would not constitute a substantial change from the proposal evaluated in the 2011 Mercury Storage EIS and updated in the 2013 Mercury Storage SEIS. On December 23, 2019, DOE published a final rule to establish the fee for long-term management and storage of elemental mercury (84 FR 70402; Fee Rule).

Two domestic generators of elemental mercury subsequently filed complaints in United States District Court challenging, among other things, the validity of the Fee Rule and the ROD (*Coeur Rochester, Inc. v. Brouillette et al.*, Case No. 1:19-cv-03860-RJL (D.D.C. filed December 31, 2019); *Nevada Gold Mines LLC v. Brouillette et al.*, Case No. 1:20-cv-00141-RJL (D.D.C. filed January 17, 2020)). On August 21, 2020, DOE and Nevada Gold Mines, LLC (NGM) executed a settlement agreement intended to resolve NGM's complaint in its entirety. Consistent with that agreement, on September 3, 2020, DOE filed a motion in the District Court asking the Court to vacate and remand the Fee Rule. The District Court granted the motion to vacate and remand the Fee Rule on September 5, 2020. Given the rulemaking process required to establish a fee for the long-term management and storage of elemental mercury, and the expiration of DOE's current lease with WCS in June 2021, DOE also agreed in the settlement with NGM to withdraw the designation of WCS pursuant to MEBA Section 5(a)(1) as a facility of DOE for the purpose of long-term management and storage of elemental mercury. DOE subsequently withdrew the designation of WCS under MEBA in an amended ROD on October 6, 2020 (85 FR 63105). The District Court granted a joint stipulation to dismiss the litigation from Coeur Rochester, Inc. on April 23, 2021.

Purpose and Need for Action

DOE must designate a facility for the long-term management and storage of elemental mercury generated within the United States, as required by MEBA. MEBA also requires DOE to

assess and collect a fee to cover certain costs of long-term management and storage of elemental mercury.

MEBA establishes that by January 1, 2019, a DOE-designated facility shall be operational and accept custody, for the purpose of long-term management and storage, of elemental mercury generated within the United States. Fiscal Year 2021 Appropriations Act Explanatory Statements for Division D, Energy and Water Development and Related Agencies, includes the following statement, “The Department [DOE] is directed to finalize the Fee Rule for mercury storage as expeditiously as possible.”

Proposed Action

DOE proposes to designate one or more facilities for the long-term management and storage of elemental mercury in accordance with MEBA. Facilities must comply with applicable requirements of Section 5(d) of MEBA, “Management Standards for a Facility,” including the requirements of the *Solid Waste Disposal Act* as amended by RCRA, and other state-specific permitting requirements. Consistent with the Supplement Analysis prepared in 2019 but updated to account for accumulation of elemental mercury since then, the SEIS-II will evaluate the potential environmental impacts of an estimated inventory of up to 7,000 metric tons of elemental mercury that could require management and storage during the 40-year period of analysis.

After completion of DOE’s Proposed Action, DOE would establish the fee for long-term management and storage of elemental mercury through rulemaking conducted pursuant to the Administrative Procedure Act (5 U.S.C. 551 et seq.). DOE would evaluate the potential environmental impacts of the rulemaking in accordance with NEPA implementing procedures at 10 CFR 1021.213.

Proposed Alternatives

The 2011 Mercury Storage EIS and the 2013 Mercury Storage SEIS evaluated both new construction and the designation of existing facilities for management and storage of elemental mercury. In the SEIS-II, DOE's range of reasonable alternatives includes existing facilities that could be designated with only minor modifications to meet the permitting requirements for elemental mercury storage. Construction of new facilities would further negatively impact the schedule for DOE's receipt of elemental mercury, which was required by MEBA to begin acceptance by January 2019.

Of the four existing facilities evaluated in the 2011 Mercury Storage EIS, two remain as reasonable alternatives. Since 2011, portions of the Bannister Federal Complex in Kansas City have been transferred from DOE to a private entity and rezoned as an urban redevelopment district. Therefore, this facility is no longer considered a reasonable alternative for the storage of elemental mercury. Additionally, the planning basis for the existing facilities at the Idaho National Laboratory Radioactive Waste Management Complex (RWMC) has changed and those facilities are no longer considered a reasonable alternative for storage of elemental mercury. DOE is planning to demolish these facilities and close the RWMC once its current radioactive waste mission is completed. Therefore, the SEIS-II will update the analysis for the Hawthorne Army Depot in Nevada and the WCS site in Texas.

In addition to the two sites identified previously, the SEIS-II will also evaluate other facilities that maintain or would be capable of maintaining a RCRA Part B permit for the long-term management and storage of elemental mercury. DOE used four methods to identify these additional facilities: (1) DOE contacted commercial facilities that had previously certified to DOE that they meet the requirements to accept and store elemental mercury at least until the DOE-designated facility opens (<https://www.energy.gov/em/downloads/permitted-mercury-storage-facility-notifications>); (2) on December 3, 2020, DOE issued basic ordering agreements to companies to conduct nationwide waste management services, including ancillary services such as management and storage of elemental mercury; (3) on October 14, 2020, DOE issued a

Sources Sought Synopsis/Request for Information to identify potential offerors to provide leased space and associated services for the management and storage of elemental mercury; and (4) DOE is re-evaluating existing facilities on DOE property that could be repurposed for management and storage of elemental mercury. Past and ongoing procurement actions were used only to assist in the identification of potential reasonable alternatives for consideration in the SEIS. They do not have a bearing on what future procurement actions that DOE would take to contract for services related to long-term management and storage of elemental mercury.

Through these outreach efforts, DOE has identified the following additional reasonable alternative locations that will be evaluated in the SEIS-II (in addition to those previously evaluated as discussed previously):

- Bethlehem Apparatus in Bethlehem, Pennsylvania;
- Clean Harbors (facilities in Pecatonica, Illinois; Greenbrier, Tennessee; and Tooele, Utah);
- Veolia North America in Gum Springs, Arkansas; and
- Perma-Fix Diversified Scientific Services, Inc., in Kingston, Tennessee.

As part of the SEIS-II, DOE will update the analysis of the No-Action Alternative.

Potential Areas of Environmental Analysis

DOE has tentatively identified the following resource areas for analysis in the SEIS-II. The following list is not intended to be comprehensive or to pre-determine the potential impacts to be analyzed: land use and visual resources; geology and soils; water resources; air quality and noise; ecological resources; cultural and paleontological resources; infrastructure; waste management; occupational and public health and safety; socioeconomics; transportation; and environmental justice.

NEPA Process and Public Participation in the SEIS-II

DOE will prepare the SEIS-II in accordance with the Council on Environmental Quality (CEQ) regulations at 40 CFR parts 1500–1508¹ and DOE NEPA implementing procedures at 10 CFR part 1021. In accordance with 10 CFR 1021.311(f), a public scoping process is not required for a DOE-issued SEIS. DOE will issue a *Federal Register* notice detailing the release of the draft SEIS-II, dates of one or more internet-based public hearings, and directions on submitting public comments. DOE expects to issue the Draft SEIS-II in late 2021.

Signing Authority

This document of the Department of Energy was signed on May 17, 2021, by Mark Gilbertson, Associate Principal Deputy Assistant Secretary for Regulatory and Policy Affairs, pursuant to delegated authority from the Secretary of the Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with the requirements of the Office of the *Federal Register*, the undersigned DOE *Federal Register* Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on May 19, 2021.

Treena V. Garrett,
Federal Register Liaison Officer,
U.S. Department of Energy.

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¹ On July 16, 2020, the CEQ issued a final rule to update its regulations for Federal agencies to implement NEPA (85 FR 43304). The effective date for the new regulations is September 14, 2020. Because the SEIS-II was initiated after that effective date, it will be prepared in accordance with the new CEQ regulations.